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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Computer III Remand Proceedings:)
Bell Operating Company Safeguards;)
and Tier 1 Local Exchange Company)
Safeguards)

CC Docket No. 90-623

Application of Open Network)
Architecture and Nondiscrimination)
Safeguards to GTE Corporation)

CC Docket No. 92-256

COMMENTS OF BELL ATLANTIC

The Bell Atlantic Telephone
Companies

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COMMENTS OF BELL ATLANTIC¹

I. Introduction and Summary.

As the Commission has already found, customers expect an integrated firm to provide all its products and services on an integrated basis. That expectation exists regardless of whether the services and products are internally developed or acquired, and such action raises no privacy concerns.²

Expansion of the Customer Proprietary Network Information ("CPNI") regulations will not increase privacy.

¹ The Bell Atlantic Telephone Companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; and Bell Atlantic-West Virginia, Inc.

² Recent events may have rendered moot the reason for this investigation -- the increase in mergers, acquisitions and alliances in the telecommunications industry. In addition to the February cancellation of the Bell Atlantic/Telecommunications, Inc. merger, Southwestern Bell announced on April 5, 1994 that it was calling off its acquisition of an interest in Cox Cable and Judge Greene denied a waiver to allow AT&T to acquire McCaw Cellular. See *Communications Daily*, April 6, 1994 at 1-3.

Those regulations are targeted to specific companies and services and do not affect the number of unsolicited advertising or product promotions a customer receives nor how most companies use information obtained from customers. The Commission developed the CPNI rules primarily to deal with competitive, not privacy, concerns raised by enhanced service providers and equipment vendors trying to avoid competition from the Bell operating companies ("BOCs").

Privacy is a far more pervasive issue. There is no need for the Commission to promulgate privacy rules at all, but, if rules are adopted, they should apply equally to all service providers and all services, not targeted to a mere subset using rules established for other purposes. Instead of a rulemaking, the Commission should promote a broad-based industry forum to develop voluntary privacy guidelines.

II. Customers Expect An Integrated Company To Provide Products and Services on An Integrated Basis.

The Commission has already resolved the principal issue it raises in the Public Notice -- customer expectations of dealing with an integrated firm. When it adopted rules to implement the Telephone Consumer Protection Act of 1991 ("TCPA"),³ the Commission examined the expectations of consumers who had a prior business relationship with a firm. At that time it

³ P.L. 102-234, 47 U.S.C. § 227.

conclude[d], based upon the comments received and the legislative history, that a solicitation to someone with whom a prior business relationship exists does not adversely affect subscriber privacy interests. Moreover, such a solicitation can be deemed to be invited or permitted by a subscriber in light of the business relationship.⁴

Recent evidence confirms that finding. A forthcoming national survey, for example, indicates that nearly two-thirds of the public accepts the fact that subsidiaries within the same corporate family will share customer information to make offers of services and products.⁵

The only thing that has changed in the past year and one-half since the Commission's finding is that there has been an increase in proposed mergers and acquisitions in the telecommunications industry, several of which have not materialized.⁶ There is, however, no reason that subscribers' expectations differ when a firm offers new products and services as a result of acquisition or merger as opposed to internal development. Mergers and acquisitions have been a frequent part of American corporate life and, of necessity, were taken into account when Congress enacted the TCPA. By deciding to allow

⁴ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 7 FCC Rcd 8752 at ¶ 34 (1992) (emphasis added).

⁵ *Consumers and Credit Reporting, 1994*, survey by Louis Harris & Associates and Dr. Alan F. Westin ("1994 Consumer Survey").

⁶ Pacific Telesis has moved in the other direction by divesting its wireless operations.

unsolicited advertising when a prior business relationship exists, Congress clearly contemplated that at least the historical rate of corporate mergers would continue and that the subscriber expectations of a continued business relationship would carry over to the merged firm.⁷

When Bell Atlantic offers a new product or service, whether internally-developed or by acquisition, it plans to "brand" the new offering with the Bell Atlantic name. This branding will keep the Bell Atlantic name in front of the public and provide consumers with the expectation that the new product or service will adhere to the same high quality standards as existing Bell Atlantic offerings.⁸ Associating the new offerings with the Bell Atlantic name will also maintain consumers' expectations that they will be available from a single source.⁹ Expanding the CPNI rules would be inconsistent with that expectation and would cause increased confusion on the part of the public. The few acquisitions and mergers that have occurred in the telecommunications marketplace have not increased the need

⁷ Under the TCPA, a consumer may request to be placed on a "do not call" list which must be honored regardless of any prior business relationship.

⁸ As part of its corporate branding policy, Bell Atlantic has recently changed the names of its telephone companies to those listed in n.1 above.

⁹ Customers who choose not to receive Bell Atlantic's unsolicited telephone or mail advertising need only notify Bell Atlantic.

to regulate subscribers' privacy, and, accordingly, there is no basis for the Commission to revisit its earlier ruling.¹⁰

Consumers benefit from and expect integrated marketing. Integrated marketing affords easier and more efficient access to those particular products and services that will meet the customer's particular needs. By using information gained during the prior business relationship, the integrated firm can better assist the customer by narrowing his or her selection process to a limited number of complementary offerings. This is particularly critical in the case of consumers and small businesses that do not have the resources to survey all available telecommunications products and services. If the company were barred from integrated marketing, the customer could be bombarded with advertising for all of the firm's products and services with no guidance to aid the selection process. Privacy would be reduced, inconvenience and customer confusion increased, and product selection made more complex.¹¹

¹⁰ As far as Bell Atlantic is aware, there have been no complaints to the Commission even purporting to demonstrate that the existing rules are inadequate to prevent anticompetitive abuses.

¹¹ The Commission should recognize that federal law already contains several sources of consumer privacy protection. In addition to the TCPA, 47 U.S.C. § 227, 47 U.S.C. § 605 protects the privacy of communications, and 18 U.S.C. § 2511, the federal wiretap law, makes it a criminal offense to intercept, use or disclose electronic communications, including electronically stored communications.

III. The CPNI Rules Were Never Intended to Address Privacy Issues.

On each of the eight prior occasions in which the Commission has addressed application of the CPNI rules to the BOCs, such action was prompted by unfounded allegations that safeguards were needed to prevent anticompetitive practices, not by privacy concerns.¹² While the Commission mentioned privacy in passing, the language in the orders make clear that protection of competitors was the principal motivation.

For example, in adopting the CPNI rules for provision of CPE, the Commission stated that it was concerned that structural integration "could give the BOCs an unfair advantage over competitors."¹³ On reconsideration, the Commission reiterated that the CPNI rules were being imposed "for competitive purposes."¹⁴

¹² See *Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, Phase I Report and Order, 104 F.C.C.2d 958 at ¶¶ 264-65 (1986), Phase II Report and Order, 2 FCC Rcd 3072 at ¶¶ 15-56 and 164-65 (1987), Phase II Memorandum Opinion and Order on Reconsideration, 3 FCC Rcd 1150 at ¶¶ 96-99 (1988), Phase I and II Memorandum Opinion and Order on Further Reconsideration and Second Further Reconsideration, 4 FCC Rcd 5927 at ¶ 27 (1989); *Filing and Review of Open Network Architecture Plans*, 4 FCC Rcd 1 at ¶ 402 (1988); *Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies*, Report and Order, 2 FCC Rcd 143 at ¶ 70 (1987), Memorandum Opinion and Order on Reconsideration, 3 FCC Rcd 22 at ¶¶ 20-22 (1987); *Computer III Remand Proceedings: Bell Operating Company Safeguards; and Tier I Local Exchange Company Safeguards*, 6 FCC Rcd 7571 (1991).

¹³ 2 FCC Rcd 143 at ¶ 65.

¹⁴ 3 FCC Rcd 22 at ¶ 20.

The Commission extended the CPNI rules to the marketing of enhanced services for the very same reason:

The primary problem raised in the record is the potential for carriers to use the CPNI in their possession to market enhanced services to their competitors' customers. In theory, carriers can identify potential customers directly from their competitors' CPNI or indirectly by using the CPNI of those customers that access competitors' enhanced services through dedicated facilities.¹⁵

Given this history, the Commission was incorrect in suggesting in the Public Notice that initiated this proceeding that privacy was the principal, or even an important, motivation for the CPNI rules.¹⁶ The Commission should not now, in its ninth consideration of the rules, suddenly transform them into something they were never intended to address.

IV. The CPNI Rules Are An Inappropriate Vehicle to Address Privacy.

The Commission has imposed the CPNI rules as a nonstructural safeguard only on the BOCs, AT&T and, recently, GTE.¹⁷ Privacy is a far more pervasive issue than the application of CPNI to those few carriers, or even to the telecommunications industry as a whole. Consumers' concerns that information about them will be used for unsolicited advertising,

¹⁵ 104 F.C.C. 2d 958 at ¶ 261.

¹⁶ See Public Notice, FCC 94-63 at 2 (rel. March 10, 1994).

¹⁷ *Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation*, CC Docket No. 92-256, FCC 94-58 (rel. April 4, 1994).

surveys, and other licit and illicit activities are not nearly as confined as are the CPNI regulations. Those concerns transcend the Commission's competitive policies, its designation of carriers as "dominant" or "non-dominant," its categorization of services as "basic" or "enhanced" or any other distinctions embodied in its rules and policies. The CPNI rules prevent access to only certain information by certain individuals in certain companies. They by no means alleviate consumers' broad privacy concerns.

Nor would expansion of those requirements appreciably affect privacy. Such expansion would, however, exacerbate the existing regulatory asymmetry that adversely impacts the ability of Bell Atlantic and certain other companies to meet customers' needs. Requiring notification to all customers or affirmative approval before Bell Atlantic's own personnel may look at customer records is likely to confuse and inconvenience the public, not increase their privacy. Consumers receive so many notices in the mail that they are very likely to view them as "junk" mail and discard them unread. They will then find it more difficult to learn about Bell Atlantic services and products, even though they have taken no action to change their relationship with Bell Atlantic. When this happens, the consumers will either blame the Commission for imposing annoying regulations and "red tape" or Bell Atlantic for being so difficult to deal with. While the latter will give the vocal competitors that are not subject to the CPNI rules an unfair

marketing advantage, neither result serves the public interest. The Commission should not accede to the expected calls from competitors to use regulatory processes, rather than the marketplace, as their competitive tool.

V. There Is No Need For New Privacy Regulations.

Instead of attempting to meet vague privacy concerns with an intrusive set of regulations, the Commission should promote, or sponsor, a broad-based forum to develop an industry-wide code of privacy. The principles developed in such a forum should be given wide publicity, along with a list of those companies that agree to abide by them.¹⁸ Responsible firms will readily agree to such a code, and public and industry pressure can be expected quickly to bring reluctant companies into line. Only if such voluntary principles prove inadequate to protect privacy should the Commission consider promulgating any mandatory rules. Those rules should be narrowly-constructed to address only the inadequacies in the voluntary code or the failure of some firms to adhere to it.

Self-regulation also meets the public's expectations. Consumers use and rely on the voluntary movie ratings, for example, with no expectation of government controls. The recent

¹⁸ There are a number of precedents for such voluntary industry codes of conduct. Examples include the Motion Picture Association of America's "Voluntary Movie Rating System" and the Direct Marketing Association's "Guide to Effective Self-Regulation in the Use of Information."

national poll shows that 66% of public feels that voluntary privacy guidelines are preferable to mandatory government regulation,¹⁹ and this position was echoed by most of the parties to the recent NTIA privacy inquiry.²⁰

Such self-regulation is particularly important in the formative stages of the National Information Infrastructure ("NII"). Services that are under development or are in the conceptual stage may significantly change traditional concepts of what is private and how that privacy should be protected. Mandating a fixed treatment of privacy could interfere with the development of creative new services on the NII. Preemptive action, therefore, could harm the public and inhibit new technological development.

VI. Conclusion

As innovative use of the country's telecommunications infrastructure expands, there will be fears raised that customers' privacy is being undermined. As NTIA has pointed out,

The existence of more transactional data may enable both large and small firms to conduct more effective targeted advertising and market research, which could facilitate the ability of individuals to access the products and services they desire. At the same time, people may be uncomfortable with the notion

¹⁹ 1994 Consumer Survey.

²⁰ National Telecommunications and Information Administration, *Inquiry on Privacy Issues Relating to Private Sector Use of Telecommunications-Related Personal Information*, 59 Fed. Reg. 6842 (Feb. 11, 1994).

that "someone" may be keeping track of every transaction they engage in with the outside world.²¹


The best way to deal with these issues is in a broad-based industry forum, aimed at producing a voluntary code of privacy principles. The wrong way is to expand the CPNI rules, rules that were developed for a different purpose and affect only a limited number of companies and services.

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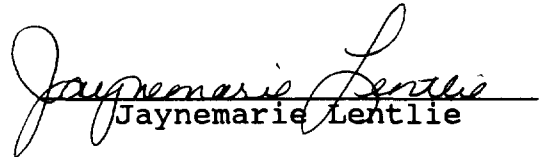
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²¹ *Id.* at ¶ 14.

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I hereby certify that a copy of the foregoing "Comments of Bell Atlantic" was served this 11th day of April, 1994, by first class mail, postage prepaid, on the parties on the attached list.


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